

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re: Patent Application of
KLAUS SCHUMACHER

Serial No. 10/041,075

Filed: January 9, 2002

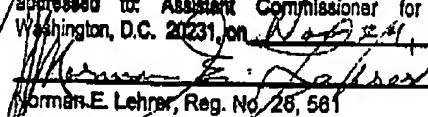
For: DUAL BOTTLE CLOSURE

Group Art Unit 3727

Examiner James N. Smalley

Mail Stop Appeal Brief - Patents
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

I hereby certify that this document is being deposited with
the U.S. Postal Service as first class mail in an envelope
addressed to: Assistant Commissioner for Patents,
Washington, D.C. 20231, on September 22, 2003

Norman E. Lehrer, Reg. No. 26, 581

APPELLANT'S BRIEF ON APPEAL

Pursuant to 37 C.F.R. §1.192, Appellant hereby presents his brief on appeal from
the Examiner's Final Rejection. A timely filed Notice of Appeal was received in the Patent and
Trademark Office on September 22, 2003.

1. REAL PARTY IN INTEREST

The real party in interest is as stated above in the caption.

2. RELATED APPEALS AND INTERFERENCES

Appellant and Appellant's legal representative are unaware of any other appeals or
interferences which will directly affect or be directly affected by or have a hearing on the Board's
decision on the pending appeal.

3. STATUS OF THE CLAIMS

Claims 1-3 and 5 stand rejected and are on appeal. Claim 4 has been cancelled and Claim 6-11 have been withdrawn from consideration

4. STATUS OF AMENDMENTS

No amendments have been filed subsequent to the final rejection.

5. SUMMARY OF INVENTION

The invention defined in the claims involved in the present appeal essentially includes a bottle 12 with a neck 14 having outer screw threads 16 located thereon, an opening in the top thereof, and an external closure in the form of an external cap 18 which fits onto the neck 14 of the bottle 12 and substantially covers the opening. Located within the cap 18 is an insert 20 with internal screw threads 22 complimentary to the screw threads 16 of the neck 14 of the bottle 12. (See Figures 2, 3, and 5.) The insert 20 lines the inside of the cap 18 and is secured thereto. (See the Specification at page 4, lines 13-20.)

The opening at the top of the bottle 12 is sealed with an internal closure in the form of a crown cap 24. Although not specifically shown, the crown cap 24 includes an outer metallic member that is crimped onto the bottle and an inner sealing member made of cork or plastic or the like that is held tightly over the bottle opening in order to seal the same. When the cap 18 is placed over the opening which is sealed with the crown cap 24, the crown cap 24 is substantially enclosed or covered within the interior space 26 and the screw threads 22 of the insert 20 may be screwed onto the complimentary screw threads 16 on the neck 14 of the bottle 12. (See the Specification at page 5, lines 1-9.)

Preferably, the bottle 12 and cap 18 are made of ceramic material. The bottle may, of course, be of any shape and size as long as it has a threaded neck 14. The insert 20 is preferably made from a plastic material that can slide easily across the ceramic threads of the bottle without binding. The cap 18 and insert 20 are shaped to fit onto the bottle 12 in a complimentary fashion. Alternatively, the insert need not be present at all. For example, the insert may be used when a specific orientation or alignment of the cap in relation to the bottle is necessary. (See the Specification at page 5, lines 10-17.)

6. ISSUE

The sole issue is whether Claims 1-3 and 5 are unpatentable under 35 U.S.C. §103(a) over U.S. Patent No. 2,131,969 to Podel in view of U.S. Patent No. 2,390,561 to Staples.

7. GROUPING OF CLAIMS

The claims stand or fall together.

8. ARGUMENT

The Examiner has rejected Claims 1-3 and 5 under 35 U.S.C. §103(a) as being unpatentable over Podel in view of Staples. According to the Examiner, Podel discloses a sealed package comprising a glass bottle having an opening and a neck with external screw threads formed thereon, an external closure in the form of an external metallic cap with internal screw threads, and an internal closure in the form of an imperforate crown cap wherein the external cap substantially encloses the crown cap when the external cap is threaded onto the neck of the bottle. The Examiner admits that Podel does not disclose an external closure formed of ceramic. However, the Examiner states that Staples discloses a sealing container having a glass cap for sealing a glass container and that Staples discloses the benefit of using glass in place of metal.

The Examiner also states that it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bottle of Podel with a glass cap in place of a metal cap in order to save metal and to obviate corrosion. The Examiner also believes that Staples discloses an insert comprised of plastic. Appellant respectfully disagrees.

Appellant's invention is directed toward a dual bottle closure having a ceramic bottle with an opening and a neck with external screw threads formed thereon; an external closure in the form of an external ceramic cap for covering the opening of the bottle, the external cap having internal screw threads which mate with the screw threads of the neck; and an internal closure in the form of an imperforate crown cap secured to the bottle; wherein the external cap substantially encloses the crown cap when the external cap is threaded onto the neck of the bottle. Appellant recites that the bottle and external cap are ceramic.

Podel does not disclose nor render obvious a bottle and external cap made from ceramic. Podel is directed toward a closure for a ketchup bottle. (See column 2, lines 49-54.) Podel does not disclose a ceramic bottle, as the Examiner acknowledges. Typically, ketchup bottles are made from glass or plastic, not ceramic. Nor would it be obvious or desirable to make a ketchup bottle from ceramic as it would not be very cost efficient to do such. Also, it would not be very practical to use a ceramic ketchup bottle. Ceramic bottles are typically used for decoration. Ketchup bottles are utilitarian and are seldom used as decorative objects.

Staples discloses a gasketing system that uses a sealing medium between overlapping solid surfaces such as the cap for the mouth of a container. Staples does disclose the use of the sealing medium between the glass threads of a glass cap with similar threads of a glass container. Staples does not, however, disclose or suggest a bottle and external cap made from

ceramic. Therefore, to combine the references as suggested by the Examiner would not result in Appellant's invention.

Neither would it be obvious to use ceramic instead of glass as suggested by the Examiner. Appellant has indicated in the specification that the use of a ceramic cap and ceramic bottle is the preferred embodiment. (See the Specification at page 2, lines 16-20; page 3, line 1; and the Abstract.) The use of ceramic is an important feature of Appellant's invention and it would not be obvious to exchange the use of ceramic with other materials as noted by the Examiner. Therefore, Appellant's claimed invention is not suggested by the references relied upon by the Examiner.

Respectfully submitted,

KLAUS SCHUMACHER

By


Norman E. Lehrer

Registration No. 26,561

Dated: November 24, 2003

APPENDIX

1. A dual bottle closure comprising:

a ceramic bottle having an opening and a neck with external screw threads formed thereon;

an external closure in the form of an external ceramic cap for covering said opening of said bottle, said external cap having internal screw threads which mate with said screw threads of said neck; and

an internal closure in the form of an imperforate crown cap secured to said bottle; wherein said external cap substantially encloses said crown cap when said external cap is threaded onto said neck of said bottle.

2. The dual bottle closure of Claim 1 wherein said external closure includes an insert that fits within said external cap.

3. The dual bottle closure of Claim 2 wherein said internal thread screws are carried by said insert.

5. The dual bottle closure of Claim 2 wherein said insert is comprised of plastic.